

a

TAN SING LIAT

v.

YAP HOCK TIANG

b

HIGH COURT MALAYA, JOHOR BAHRU

MAHADEV SHANKAR J

[CIVIL APPEAL NO. 15 OF 1981]

1 JUNE 1985

c

LANDLORD AND TENANT: *Lease expired - Land reverted to State - Landlord continued collecting rent from tenant - State government accepted fees for renewal of lease - Issued receipts - Landlord continued paying assessments and licence fees - Legal implications - Tenant refused to pay rent subsequently - Application to discharge warrant of distress.*

d

The appellant was holding a lease (upon the land comprised in the lease stood a theatre) which was due to expire on 15 July 1977. Prior to 30 April 1977, the respondent was occupying the land and theatre under a written tenancy agreement with the appellant. After 30 April 1977, the expiry date of the agreement, the respondent continued paying rent until October 1981 when he stopped payment. The respondent then claimed a refund of RM9,000 from the appellant on the ground that the appellant has no authority to collect rent as he no longer has any interest in the land. All the while, the appellant had paid fees for a renewal of lease and was issued a receipt for it. He has been paying assessments and licence fees for the theatre ever since. The State government had done nothing in connection with the appellant's connection with the premises. The appellant filed a warrant of distress but it was set aside by the learned Magistrate. The appellant appealed to the High Court.

*e***Held:***f*

[1] Between the appellant and the State government, he can at the very least, claim with justification that he is a licensee of the premises and that his licence is coupled with an interest which entitles him to most favoured treatment if and when a new document of title is issued.

g

[2] Where the appellant has some rights albeit inchoate or some colour of title under which he continues to receive rents, s. 116 of the Evidence Ordinance 1950 would apply and estop the tenant from denying his landlord's title.

[3] Notwithstanding the expiry of the lease proper, the receipt of payment by the State Authority arising out of or incidental to the use to which the land is being put must create some rights.

[Appeal allowed.]

*h***Cases referred to:**

Fatimah v. Moideen Kutty [1969] 1 MLJ 72

Ban Seng v. Yap Peck Soo [1967] 2 MLJ 156

Cheok Lek San v. Yong Kam Chin [1970] 2 MLJ 179

Singma Sawmill Company Sdn. Bhd. v. Asian Holdings (Industrial Buildings) Sdn. Bhd. [1980] 1 MLJ 21

Legislation referred to:

National Land Code 1965, s. 47 & 50

Subordinate Court Rules 1980, O. 29 r. 8

i

Evidence Ordinance 1950, s. 116

For the appellant - Ong Ban Chai; M/s Ong Ban Chai & Co.

For the respondent - Subra Naicker; M/s Subra Naicker & Co.

JUDGMENT

Mahadev Shankar J:

This is an appeal against the decision of the Magistrate given at Kluang on 22 August 1981 whereby he set aside a warrant of distress taken out by the Appellant on 11 August 1981 against the respondent. He made this Order on 22 August 1981 pursuant to an application by the respondent on 12 August 1981. A notice of appeal was filed on 23 August 1981 and the learned Magistrate gave his decision on 23 January 1982. But the appeal only came on for hearing on 9 March 1985. The delay is most regrettable. The reasons for it have not been explained.

After the hearing, I reversed judgment. On 22 April 1985 I allowed this appeal, reinstated the Warrant of Distress dated 11 August 1981, ordered the costs of this appeal and in the Court below to be paid by the respondent and gave the parties liberty to apply for such further order as the justice of this case requires.

I then informed the parties that full reasons for this decision will be given later. I do so now.

Tan Sing Liat, the appellant (hereafter referred to as Tan) was the holder of lease 930, PTD 3790 Mukim of Kahang (the lease). Upon the land comprised in the lease stood a theatre described as the Palace Theatre, Kahang.

Prior to 30 April 1977, Yap Hock Tiang (Yap) occupied the land and the theatre under a written tenancy agreement with Tan. Rent was paid at RM250 per month by Yap to Tan.

On 30 April 1977, the written agreement between Yap and Tan expired. But Yap continued to pay and Tan received the monthly rent of RM250 for the land comprised in the lease and the theatre erected thereon (the premises).

As between Tan and the State Government, the lease was due to expire on 15 July 1977. But before this happened, Tan applied for a renewal of the lease and in this connection paid to the Pejabat Tanah Johore on 4 August 1976 a renewal fee of RM10. This money was accepted by the Pejabat Tanah, Johore who issued a formal receipt for it.

The lease expired by effluxion of time on 15 July 1977. By 9 June 1981 the State Government had not yet got round to issuing a new lease for the premises. But on the other hand, it did nothing to interfere in any way with Tan's quiet enjoyment of the premises. Indeed, the relevant departments of the State Government continued to collect from Tan all assessments upon the premises and does so to this day. Furthermore it collects from Tan the licence fee for the theatre as well.

As between Tan and Yap, Yap continued to pay rent at the rate of RM250 per month after July 1977 and up to and including the rent for October 1980.

After the date, he stopped paying rent. On 16 July 1981 Yap caused to issue through his Solicitors, M/s. Sucha Singh & Co. a letter in which he denied that Tan had any title to collect rental from Yap. The reason given for this denial of title was that since the lease had expired on 15 July 1977, Tan had no further authority to collect rental. It was contended further that rental collected from July 1977 was illegal and a claim was made for a refund of RM9,000 on this account.

- a* Tan's response was to file a warrant of distress on 11 August 1981 for RM2,200 being rent due from November 1980 till July 1981 and the same day, the bailiff levied distress and took into his custody some moveable property in the theatre. Yap thereupon filed an application dated 13 August 1981 to discharge the warrant of distress. He filed an affidavit in support. He attached by way of an exhibit to this affidavit, a copy of a letter dated 9 June 1981 purportedly signed by the Collector of Land Revenue at Kluang addressed to Tan. The letter stated that according to the Land Office records the lease had expired on 15 June 1977 and for that reason the land belonged to the State.
- b*

- c* When and how this letter came into the possession or knowledge of Yap is not in evidence. But in his affidavit, he claimed that Tan was not entitled to distrain, that the Warrant of Distress was wrongful, that he Yap had himself applied for a temporary occupation licence in respect of the property, and that upon expiry of his tenancy agreement with Tan on 30 April 1977 Tan had refused to renew the written Tenancy Agreement.

- d* When the dispute came before the Magistrate on 22 August 1981 a note was made that Mr. Sucha Singh intends to call 2 witnesses but Mr. Ong Ban Chai does not dispute the facts as contained in the affidavit.

- e* Precisely what this means is far from clear. Mr. Ong Ban Chai acting for Tan had made it amply clear he was going to call evidence to sustain his contention that Tan was entitled to distrain.

- f* Notwithstanding the knowledge that Tan was going to give evidence of facts to show that he had a right to distrain Yap's Counsel called no evidence. He merely made an opening statement that under s. 47 of the National Land Code (the Code) the land had reverted to the State Authority and therefore the Warrant of Distress was unlawful.

- g* Tan gave evidence on oath. He proved the payment of the renewal fee for the lease. He proved the assessments that he had paid year after year and he also proved that he had continued to pay the fee for the theatre licence. All he was asked in cross-examination was to confirm that he had known that his lease had expired and that he had continued to pay the assessment rates because the business was still going on.

- h* The parties then made their respective submissions and the Magistrate gave his decision. After setting out the facts, the Magistrate appears to have decided that once the lease expired on 15 June 1977, the land reverted to the State Authority, and thereupon Tan was totally stripped of all his rights to collect any rent from his premises. He therefore went on to hold that Tan had collected rent after July 1977 illegally and that the Warrant of Distress should in conscience therefore be discharged.

- i* A number of authorities were cited to the Learned Magistrate by respective Counsel for the parties, and again ventilated on appeal. I shall now deal with them.

- j* In the present case although Tan's lease had expired on 15 July 1977 the fact is that prior to its expiry the State Government had consciously accepted a fee in connection with the application for the renewal and issued a receipt therefor. This act to my mind has legal implications.

- k* It is a notorious fact that applications to Land Offices take time to process. So far as the State Government is concerned, it has done nothing to date to show that it in any way disapproved or prohibited Tan's connection with the premises. The continued receipt of assessments and the licence fees year after year for the theatre from Tan by the relevant Government departments, also carries with it legal implications.

The State Government cannot be regarded as some kind of multi-faceted personality with as many entities as there are Government departments. Each department is really a part of the whole, and constructive knowledge has to be imputed to the State Authority in a case like this.

a

So even though Tan's lease has expired, it is my finding that as between him and the State Government, he can at the very least, claim with justification that he is a licensee of the premises and that his licence is coupled with an interest which entitles him to most favoured treatment if and when a new document of title is issued. The true application of the decisions which have been cited in favour of Yap is that where it is shown that the title of the landlord has been wholly extinguished then of course he has no right to continue to collect rent from his tenant.

b

But where he has some rights albeit inchoate or some colour of title under which he continues to receive rents, s. 116 of the Evidence Ordinance 1950, in my view, would apply, and estop the tenant from denying his landlord's title.

c

A careful reading of *Fatimah v. Moideen Kutty* [1969] 1 MLJ p. 72 will reveal that the view which I have just expressed is fully supported by the Federal Court.

At p. 75, MacIntyre FJ said:

d

The law being such, it must be assumed that every contract of tenancy in respect of a house on State land contains an implied term that the tenancy is valid only for the duration of the landlord's licence to occupy the land. On the expiration of the landlord's licence either by effluxion of time or by the death of the licensee, the contract of tenancy must be deemed to have come to an end and the relationship of landlord and tenant extinguished.

In our case, Tan's lease had expired. But his licence to continue to be regarded as the person entitled to assert the first right to the premises continued unabated. *Ban Seng v. Yap Peck Soo* [1967] 2 MLJ 156 therefore applies to preclude Yap from denying Tan's title.

e

The distinction between our case and *Fatimah v. Moideen Kutty* is that there the original landlord's right under the temporary occupation licence was totally extinguished and there is no evidence whatsoever of any further payments accepted by the authorities by way of recognition that they regarded his estate as continuing to have any status whatsoever in regard to the land.

f

Cheok Lek San v. Yong Kam Chin [1970] 2 MLJ 179 can be distinguished in that the original landlord was a tin-mining company whose mining lease was **cancelled**, and the land reverted to the State. Thereafter the mining company purported to sell the building to the current landlord, a transaction which they had no authority whatsoever to enter into. The dispute there was between the occupant of the building and the barren purchasers.

g

The next decision cited was *Singma Sawmill Company Sdn. Bhd. v. Asian Holdings (Industrial Buildings) Sdn. Bhd.* [1980] 1 MLJ 21. I do not regard this authority as being of any assistance to me since the contract in that case was illegal and the tenancy agreement was void and unenforceable.

h

There is nothing illegal or unenforceable about the right of Tan in this case. Finally, I would like to touch upon ss. 47 and 50 of the National Land Code. Mr. Ong Ban Chai says that they must be read together and I agree. Section 47 clearly envisages the existence of a licence in relation to land. Notwithstanding the expiry of the lease proper, it is my view that the receipt of payment by the State Authority arising out of or incidental to the use to which the land is being put must create some rights. Section 50 of the Code also empowers the

i

a State Authority to vary, rescind or extend any provision contained in any lease or licence where the State Authority is satisfied that compliance therewith is impossible or that great hardship would otherwise accrue to the person for the time being entitled to the benefit of the lease, licence or permit as the case may be.

b For the reasons aforesaid, I think that the learned Magistrate took too narrow a view of Tan's position in this matter. With respect, he omitted to consider the significance of the various payments which Tan had made to the respective Government departments.

c This appeal has some other peculiar features. The Court file does not contain any formal order and it may be that O. 29 r. 8 of the Subordinate Court Rules 1980 are yet to be complied with. Further, the Appeal Record does not contain any petition or memorandum of appeal. Nothing was said about these omissions by either Counsel and I do not propose to dwell further upon them except to give notice to future appellants that they may need to look to these matters when preferring an appeal.

The last point which I would mention is that the great delay in disposing of this appeal may have had uncertain consequences with regard to the subject matter of the appeal.

d The Court was informed from the Bar Table, that Yap continues in occupation of the premises up to this day and has blissfully done so absolutely free of charge whilst Tan continues to bear the burden of the assessment and the licence fees for the theatre.

I regard such a situation as being quite iniquitous and therefore gave the parties liberty to apply for such further order as the justice of this case requires. My order for costs followed the event.

e

Also found at [1985] 1 CLJ 472

f

g

h

i